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**IN THE
COURT OF APPEALS OF INDIANA**

VICTORIA ROBINSON,

Appellant,

vs.

ST. JOSEPH COUNTY DEPARTMENT OF
CHILD SERVICES,

Appellee.

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No. 71A04-0801-JV-11

APPEAL FROM THE ST. JOSEPH PROBATE COURT

The Honorable Peter J. Nemeth, Judge
Cause No. 71J01-0706-JT-77 and 78

April 22, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Victoria R. (Mother) appeals the involuntary termination of her parental rights to her children, D.M. and K.M. Mother raises one issue for our review: was the evidence sufficient to support the termination of Mother's parental rights.

We affirm.

On the evening of March 8, 2006, officers of the North Liberty, Indiana police department were dispatched to Mother's apartment after receiving a call from Mother's friend, Jessica Pepper. Pepper told the officers that on March 7, 2006, she and Mother had returned to Mother's apartment with two males. The next morning, at approximately 10 a.m., Mother informed Pepper that she was driving the two males back to South Bend and would be right back. When Mother had not returned after twelve hours, Pepper called the police.

Pepper asked the officers to enter Mother's apartment. Inside, Pepper showed the officers a soda can that she said Mother used to smoke marijuana. Residue was found on the can, and it was taken into evidence. Pepper also informed officers that she had seen Mother use cocaine in front of D.M. and K.M.

Mother's kitchen was full of dirty dishes and officers saw food, cigarette butts, and dirty clothes laying on the floor in the living room. In D.M.'s and K.M.'s bedroom, officers found a bottle that contained spoiled milk and mold. The bedroom smelled of urine and the children's sheets were soiled. A crib contained dirty diapers and human waste.

The police officers contacted the St. Joseph County Department of Child Services (DCS) to report the situation. When DCS intake supervisor Susan Cramer arrived at Mother's apartment, she found that D.M., who was born on December 5, 2004, was dirty and suffered from an untreated club foot. K.M., who was born on October 11, 2005, appeared to be underweight. Cramer later learned that D.M. had a hernia and was behind on his immunization shots. K.M. had not received any immunization shots. Cramer removed D.M. and K.M. from Mother's care that night and placed both children in foster care.

On March 10, 2006, the trial court held a detention hearing and found that there was probable cause to believe that D.M. and K.M. were in need of services and that it was necessary to remove them from Mother's care. On March 31, 2006, DCS filed petitions alleging that D.M. and K.M. were children in need of services (CHINS). The trial court held an initial hearing on April 26, 2006. Mother did not appear at this hearing. After finding that Mother had been properly served with notice of the hearing, the trial court concluded that Mother was in default and, as a result, the material allegations in DCS's March 31, 2006 CHINS petition were deemed admitted.

On May 24, 2006, the trial court entered a CHINS Disposition Order in which it specified that in order to be re-united with her children, Mother must do the following: (1) Participate in individual counseling; (2) visit with the children on a regular basis; (3) cooperate with home-based services; (4) complete a drug or alcohol rehabilitation program and follow all after care recommendations; (5) submit to random drug screens

upon request of DCS; (6) complete parenting classes; (7) complete a parenting assessment and follow all recommendations; (8) complete a psychological evaluation and follow all recommendations; (9) maintain stable employment and/or a stable source of income; (10) maintain stable housing; (11) remain drug free; and (12) maintain consistent contact with DCS.

Initially, Mother's visitations with D.M. and K.M. were at the home of her mother, Maria Charles. Mother did not regularly participate in visitations. On one occasion when Mother was present for visitation, she got into an argument with Charles that resulted in the police being called. Thereafter, visitation was conducted at White's Therapeutic Services in South Bend. Despite the new location, Mother still did not regularly attend visitations. At most, Mother attended roughly one visitation per month, and she was often late to those that she did attend. DCS offered to provide Mother with transportation to the visitations, but she refused. Visitation was ultimately stopped late in the summer of 2007 due to Mother's sporadic attendance and the hardship placed on the children, who were being driven over an hour one way to attend the visitations.

During visitations, concerns were raised about Mother's parenting skills, specifically her use of corporal punishment. On May 3, 2007, D.M. began kicking a wall. Mother told him once to stop and when he did not, she began pinching his legs. Later during that same visit, D.M. touched a picture on the wall, and Mother playfully punched him in the stomach several times to make him stop. On June 14, 2007, while D.M. was sitting inside a car and Mother was outside the car, Mother attempted to tie

D.M.'s shoe through a partially rolled down window. When D.M. refused to move his foot closer to Mother, she poked him in the forehead three times hard enough to bounce his head off the car seat. On August 15, 2007, K.M. placed several small toys in her mouth. Mother did not notice this and when the individual supervising the visitation pointed this out to her, she took no action to remove the objects from K.M.'s mouth. During this same visit, D.M. hit Mother in the arm, and she told him not to hit or she would hit him back. When D.M. hit Mother again, she gave him a light spanking.

Mother did complete a drug rehabilitation program, a psychological exam, and a parenting assessment. She, however, refused to participate in individual counseling or complete a parenting class.

Mother tested positive for the use of marijuana on May 24, 2006, June 23, 2006, and September 14, 2006. Later drug tests on December 1, 2006, February 14, 2007, and April 30, 2007 were negative. On September 12, 2007, Mother was arrested for driving with a suspended license. As she was being arrested, officers discovered that Mother was in possession of cocaine and marijuana. On September 13, 2007, the State charged Mother with driving while suspended as a class A misdemeanor and possession of cocaine as a class D felony.

In July 2007, Mother was employed at a Dairy Queen restaurant. She was terminated from that position due to tardiness, absenteeism, and for stealing food. Mother was then employed at a McDonald's restaurant, where she was again prone to

tardiness and absenteeism. Mother abandoned that job in September 2007 when she did not return to work.

As of October 2007, Mother was three months behind on her rent and her boyfriend was banned from her apartment complex. Mother's landlord informed the court-appointed special advocate, Berette Bonebrake, that it was beginning eviction proceedings against Mother.

On June 15, 2007, DCS filed petitions to terminate Mother's parental rights to D.M. and K.M. The trial court held a hearing on the petitions on October 26, 2007. Following the hearing, the trial court issued an order on October 30, 2007 granting DCS's petitions to terminate Mother's parental rights. The trial court found there was a reasonable probability that the conditions that resulted in the removal of D.M. and K.M. from Mother's home would not be remedied and that there was a reasonable probability that continuation of the parent-child relationship would pose a threat to the well-being of D.M. and K.M. This appeal ensued.

Under the Fourteenth Amendment to the United States Constitution, parents have the right to establish a home and raise their children. *In re B.D.J.*, 728 N.E.2d 195 (Ind. Ct. App. 2000). The law, however, allows for the termination of these rights when an individual is unable or unwilling to fulfill his or her responsibilities as a parent. *Id.* This policy balances a parent's constitutional rights to the custody of their children with the State's limited authority to interfere with this right. *Id.* "Because the ultimate purpose of

the law is to protect the child, the parent-child relationship will give way when it is no longer in the child's interest to maintain this relationship." *Id.* at 200.

When reviewing the termination of parental rights, we neither reweigh the evidence nor judge witness credibility. *In re Involuntary Termination of Parent-Child Relationship of Kay. L.*, 867 N.E.2d 236 (Ind. Ct. App. 2007). We will consider only the evidence that supports the trial court's decision and the reasonable inferences drawn therefrom. *Id.* We will set aside a judgment terminating a parent-child relationship only if it is clearly erroneous. *Id.* A judgment is clearly erroneous when the findings do not support the trial court's conclusions or the conclusions do not support the judgment. *Bester v. Lake County Office of Family & Children*, 839 N.E.2d 143 (Ind. 2005).

Indiana Code Ann. § 31-35-2-4(b) (West, PREMISE through 2007 1st Regular Sess.) provides that in order to terminate a parent-child relationship, the State must prove:

(A) one (1) of the following exists:

- (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;

(B) there is a reasonable probability that:

- (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
- (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;

(C) termination is in the best interests of the child; and

(D) there is a satisfactory plan for the care and treatment of the child.

Indiana Code Ann. § 31-34-12-2 (West, PREMISE through 2007 1st Regular Sess.) further provides that the State must establish the elements of I.C. § 31-35-2-4 by clear and convincing evidence.

Mother argues that insufficient evidence was presented to show that there was a reasonable probability that (1) the conditions that resulted in the removal of D.M. and K.M. would not be remedied; or (2) the continuation of the parent-child relationship would pose a threat to the well-being of D.M. and K.M. Because I.C. § 31-35-2-4(b)(2)(B) is written in the disjunctive, the trial court had to find only one of the two requirements of subsection (B) was present by clear and convincing evidence. *In re L.S.*, 717 N.E.2d 204 (Ind. Ct. App. 1999), *trans. denied*. Therefore, we begin by considering whether sufficient evidence was presented to support the trial court's finding that the conditions that resulted in the removal of D.M. and K.M. would not be remedied.

In order to determine whether there is a reasonable probability that the conditions that resulted in the removal of the children will not be remedied, the trial court should judge a parent's fitness to care for his or her child at the time of the termination hearing, taking into consideration evidence of changed conditions. *A.F. v. Marion County Office of Family & Children*, 762 N.E.2d 1244 (Ind. Ct. App. 2002), *trans. denied*. The trial court, though, must also evaluate the parent's habitual patterns of conduct. *Id.* "Such an evaluation assists in determining the probability of future neglect or deprivation of the child, as well as remedial possibilities." *Id.* at 1251. Pursuant to this rule, courts have properly considered evidence of a parent's prior criminal history, drug and alcohol abuse,

history of neglect, failure to provide support, and lack of adequate housing and employment. *A.F. v. Marion County Office of Family & Children*, 762 N.E.2d 1244. Additionally, the trial court can properly consider the services offered by the State to the parent and the parent's response to those services as evidence of whether conditions will be remedied. *Id.*

Here, the record reveals that Mother refused to participate in individual counseling and take a parenting class even though the trial court ordered her to do both. Mother did not visit D.M. and K.M. on a regular basis. She participated in visitation sporadically. At one point, Mother was visiting D.M. and K.M. only once per month and frequently was late when she did attend. Mother's visitation with the children was so sporadic that late in the summer of 2007, future visitations were cancelled. When Mother did participate in visitations, concerns were raised about her parenting skills, particularly her use of corporal punishment.

Mother did not remain drug free. She tested positive for marijuana use on May 24, 2006, June 23, 2006, and September 14, 2006. Additionally, on September 12, 2007, Mother was arrested for driving with a suspended license and, at that time, was found to be in possession of cocaine and marijuana. The State later charged Mother with class A misdemeanor driving while suspended and class D felony possession of cocaine.

Mother did not maintain stable employment. Between July and September 2007, Mother was terminated from her job at Dairy Queen and abandoned her job at McDonald's. Mother also did not maintain stable housing. As of October 2007, Mother

was three months behind on her rent and her landlord was beginning the process of evicting her.

Based on this evidence, the trial court could properly conclude that there was a reasonable probability that the conditions that resulted in the removal of D.M. and K.M. from Mother's home would not be remedied.¹ Therefore, sufficient evidence was presented to support the trial court's termination of Mother's parental rights.

Judgment affirmed.

BAILEY, J., and KIRSCH, J., concur.

¹ Having determined that the trial court properly concluded that the conditions that led to D.M.'s and K.M.'s removal would not be remedied, we need not consider whether the trial court properly concluded that the continuation of the parent-child relationship poses a threat to D.M.'s and K.M.'s well-being. *See In re L.S.*, 717 N.E.2d 204.